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IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF V.H.:	)	
V.H.,	)	
Appellant-Respondent,	)	
vs.	)	No. 57A03-1103-JT-141
THE INDIANA DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE NOBLE SUPERIOR COURT
The Honorable Michael J. Kramer, Judge
Cause No. 57D02-1011-JT-8

November 10, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

V.H., Sr. (Father) appeals the involuntary termination of his parental rights to his child, V.H. Father challenges the sufficiency of the evidence supporting the trial court's termination order.

We affirm.

Father is the biological father of V.H., born in August 2009. The facts most favorable to the trial court's judgment reveal that when V.H. was one day old, the local Kosciusko County office of the Indiana Department of Child Services (DCS) was notified by hospital personnel that Father and the child's biological mother[1] were rushing to leave the hospital against medical advice and with the baby. During its investigation of the matter, the Kosciusko County case worker discovered that Father and the baby's mother had a history of involvement with the Noble County DCS, including drug abuse. The case worker immediately proceeded to the hospital to assess the baby. While at the hospital, the case worker requested a drug test of the child. Soon thereafter, both parents informed the DCS case worker that they would both test positive for methamphetamines and marijuana if drug tested. The parents also confirmed that they had used "Meth" in the previous three days, prior to V.H.'s delivery. *State's Exhibit* 1 at p.2.[2]

As a result of its investigation, DCS took V.H. into emergency protective custody. The following day, the Noble County office of DCS (NCDCS) filed a petition alleging V.H. was a child in need of services (CHINS). During a hearing on the CHINS petition in

[1] The parental rights of V.H.'s biological mother, T.C., were also involuntarily terminated by the trial court in a separate termination order. Because Mother does not participate in this appeal, we limit our recitation of the facts to those pertinent solely to Father's appeal.

[2] Mother also admitted that she had used methamphetamines once or twice per week throughout her entire pregnancy.

December 2009, Father admitted to the allegations contained therein, and V.H. was adjudicated a CHINS. The court proceeded to disposition the same day and subsequently entered an order formally removing V.H. from Father's care and custody. The court's dispositional order also directed Father to participate in and successfully complete a variety of tasks and services designed to address his substance abuse and parenting issues as well as to facilitate Father's reunification with V.H. Specifically, Father was ordered to, among other things: (1) apply to the Noble County Family Drug Court program; (2) provide documentation of attendance in at least three self-help meetings per week; (3) complete a substance-abuse assessment and follow all resulting recommendations; (4) submit to random drug screens; and (5) undergo a psychological/parenting assessment and follow all resulting recommendations. In addition, Father was directed to resume his participation in one-hour supervised visits with V.H. four times per week after his release from incarceration,[3] so long as Father produced negative drug screens before his visits.

Father's participation in court-ordered reunification services during the ensuing sixteen months was sporadic and ultimately unsuccessful. Father completed only half of the parenting assessment, produced approximately twenty positive drug screens and declined to submit to numerous other requests for screens, failed to exercise regular visitation with V.H., and refused to successfully complete the recommended intensive out-patient drug rehabilitation program. Based on Father's lack of progress in reunification services and unresolved substance abuse issues, DCDCS filed a petition seeking the involuntary

[3] Father was incarcerated from December 28, 2009, through March 23, 2010. It is unclear from the record if the reason for Father's incarceration during this time stemmed from his most recent conviction for burglary or

termination of Father's parental rights to V.H. in November 2010. The following month, Father was convicted of burglary and was sentenced to ten years incarceration, with two years suspended to probation.

An evidentiary hearing on NCDCS's termination petition was held in March 2011. During the hearing, NCDCS presented evidence establishing Father had failed to successfully complete a majority of the court-ordered reunification services, including a substance-abuse treatment program. Father also remained incarcerated with an earliest possible release date not until September 2014. As for V.H., NCDCS presented evidence showing that V.H., who was born testing positive for methamphetamine and suffered with extreme withdrawal symptoms including constant gagging, projectile vomiting, difficulty breathing, and continuous crying, was now happy and thriving in a pre-adoptive foster home with the only family he has ever known.

At the conclusion of the termination hearing, the trial court took the matter under advisement. Several days later, the trial court entered its judgment terminating Father's parental rights to V.H. Father now appeals.

Initially, we note that when reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id*. In deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a

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from earlier, unrelated charges that were filed prior to the initiation of the CHINS case.

parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204 (Ind. Ct. App. 1999), *trans. denied*. Thus, if the evidence and inferences support the trial court's decision, we must affirm. *Id.*

Here, the trial court made several detailed findings and conclusions in its order terminating Father's parental rights. Where the trial court enters specific findings and conclusions thereon, we apply a two-tiered standard of review. *Bester v. Lake Cnty. Office of Family & Children*, 839 N.E.2d 143 (Ind. 2005). First, we determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. *Id.* "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. *Quillen v. Quillen*, 671 N.E.2d 98.

The traditional right of parents to "establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. Although parental rights are of a constitutional dimension, the law provides for the termination of these rights when parents are unable or unwilling to meet their parental responsibilities. *In re R.H.*, 892 N.E.2d 144 (Ind. Ct. App. 2008). In addition, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *In re K.S.*, 750 N.E.2d 832 (Ind. Ct. App. 2001).

Before an involuntary termination of parental rights may occur in Indiana, the State is required to allege and prove, among other things:

(B) that one (1) of the following is true:

(i) There is a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied.

(ii) There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.

(iii) The child has, on two (2) separate occasions, been adjudicated a child in need of services. . . . .

Ind. Code Ann. § 31-35-2-4(b)(2) (West, Westlaw through end of 2011 1st Regular Sess.). The State's burden of proof for establishing these allegations in termination cases "is one of 'clear and convincing evidence.'" *In re G.Y.*, 904 N.E.2d 1257, 1260-61 (Ind. 2009) (quoting Ind. Code Ann. § 31-37-14-2 (West, Westlaw through end of 2011 1st Regular Sess.)). If the court finds that the allegations in a petition described in section 4 of this chapter are true, the court *shall* terminate the parent-child relationship. I.C. § 31-35-2-8 (West, Westlaw through end of 2011 1st Regular Sess.). Father challenges the sufficiency of the evidence supporting the trial court's findings as to subsections (b)(2)(B) of the termination statute cited above. *See* I.C. § 31-35-2-4(b)(2)(B).

At the outset, we note that I.C. § 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, NCDCS needed to establish only one of the three requirements of subsection (b)(2)(B) by clear and convincing evidence before the trial court could terminate parental rights. *See In re L.V.N.*, 799 N.E.2d 63 (Ind. Ct. App. 2003). Here, the trial court found NCDCS presented sufficient evidence to satisfy the first two subsections of (b)(2)(B) of the termination statute. *See* I.C. § 31-35-2-4(b)(2)(B)(i) & (ii). Because we find it dispositive

under the facts of this particular case, we shall consider only whether clear and convincing evidence supports the trial court's findings regarding subsection (b)(2)(B)(i), namely, whether there is a reasonable probability the conditions resulting in V.H.'s removal or continued placement outside the family home will not be remedied.

In making such a determination, a trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509 (Ind. Ct. App. 2001), *trans. denied*. The court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. *In re M.M.*, 733 N.E.2d 6 (Ind. Ct. App. 2000). Similarly, courts may consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F. v. Marion Cnty. Office of Family & Children*, 762 N.E.2d 1244 (Ind. Ct. App. 2002), *trans. denied*. The trial court may also consider the services offered to the parent by a county office of the Indiana Department of Child Services and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* Finally, a trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth are permanently impaired before terminating the parent-child relationship. *In re E.S.*, 762 N.E.2d 1287 (Ind. Ct. App. 2002).

Here, in finding there is a reasonable probability the conditions resulting in the V.H.'s removal and continued placement outside of Father's care will not be remedied, the trial court made detailed findings regarding Father's unresolved substance-abuse issues and lack

of progress in improving his ability to care for V.H. despite a wealth of services available to him. Specifically, the court found Father had failed to successfully complete substance-abuse treatment during the CHINS case, having only "attended about twenty (20) out of forty (40) sessions." *Appellant's Appendix* at 14. The court's findings also acknowledge Father's refusal to comply with NCDCS's requests for random drug screens, finding Father "was requested to submit to drug testing about thirty-nine (39) times, appeared twenty-three (23) times, was positive for illegal drugs seventeen (17) times and negative on six (6) occasions." *Id.*

As for Father's history of criminal involvement and ability to care for V.H., the trial court noted Father is "currently incarcerated in the Indiana Department of Correction[] serving an eight[-]year sentence for burglary," has "prior criminal convictions for operating a vehicle while intoxicated and battery," is not currently eligible for release from incarceration until September 2014, and "cannot care for, house, or support [V.H.]" *Id.* Based on these and other findings, the trial court concluded that there was a reasonable probability that the conditions resulting in V.H.'s removal will not be remedied noting, among other things, that Father had made "minimal effort[s] to remedy the reason[s]" for V.H.'s removal, was currently unavailable to "care for or support the child because of his incarceration," and further concluded that V.H. will be five years old when Father is eventually released. *Id.* Our review of the record convinces us that these findings are supported by abundant evidence.

During the termination hearing, it was the general consensus of NCDCS case

managers, as well as the court-appointed special advocate, that Father had failed to adequately address his substance abuse issues and parenting deficiencies during the CHINS case such that V.H. could be safely returned to his care. In so doing, NCDCS case manager Sue Olds-Browning confirmed that Father had failed to complete the court-ordered substance-abuse program, tested positive for illegal substances approximately twenty-three times, and exercised his right to visit with V.H. only seventeen times out of approximately 200 available visits during the sixteen months preceding his most recent incarceration. When asked whether she believed Father had "improved his ability to parent a child," Olds-Browning answered, "No[,] I would not." *Transcript* at 62. Olds-Browning further explained that her response was based on Father's history of "dirty drug screens," current incarceration, lack of income and ability to support V.H., lack of stable housing, and her belief that Father still has a "substance abuse issue." *Id.* Moreover, Father's own testimony supports the trial courts findings. During the termination hearing, Father confirmed that he had knowingly refused to finish the court-ordered parenting assessment, continuously used illegal substances throughout the CHINS case, and was currently unavailable to care for V.H. due to his incarceration.

This court has repeatedly recognized that "[i]ndividuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children." *Castro v. State Office of Family & Children*, 842 N.E.2d 367, 375 (Ind. Ct. App. 2006), *trans. denied*. Moreover, where a parent's "pattern of conduct shows no overall progress, the court might reasonably find that under the circumstances, the problematic situation will not improve." *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App.

2005). Here, Father has demonstrated a persistent unwillingness and/or inability to take the actions necessary to show he is capable of overcoming his addiction to illegal substances, refraining from criminal activity, and providing V.H. with the safe, stable, and drug-free home environment he needs. Father's arguments on appeal that the trial court "failed to include and acknowledge certain facts and evidence in its findings" and "failed to give sufficient weight to the efforts made by [F]ather to comply with the services ordered by the trial court" amount to an impermissible invitation to reweigh the evidence. *Appellant's Brief* at 5; *see also In re D.D.*, 804 N.E.2d 258.

Judgment affirmed.[4]

DARDEN, J., and VAIDIK, J., concur.

[4] To the extent Father's single reference to established case law that "[i]n determining the best interests of the children, the court must look to at the totality of the evidence and not just at the factors identified by the office of family and children," might be construed as a challenge to the trial court's determination that termination of Father's parental rights is in V.H.'s best interests, we deem this issue waived. Father has failed to assert a single cogent argument or citation to the record to support any such contention. *See, e.g., Davis v. State*, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005) (concluding that failure to present a cogent argument or citation to authority constitutes waiver of issue for appellate review), *trans. denied*.